

February 18, 2004

Senator Carl R. Johnson, Chairman
Senate Environment Committee
Legislative Office Building---Room 104
Concord, NH 03301

SUBJECT: SB 524 Relative to the Incinerator of Construction and Demolition Debris (C&D)

Dear Chairman Johnson and Members of the Committee:

Thank you for the opportunity to testify on SB 524. This bill seeks to prohibit the disposal of construction and demolition debris in an incinerator when such facility is located in an area not zoned for such activity or the facility is within three (3) miles from any residence, church, school, park, drinking water source or hospital.

Before discussing the distinguishing features of SB 524, I believe it is important for you to know some facts related to the waste-to-energy and municipal solid waste (MSW) incinerators operating in our State. There are presently two privately owned waste-to-energy MSW incinerators and five municipally owned MSW combustors operating in New Hampshire.

Private (Waste-to-Energy) Incinerators

- a. Wheelabrator in Claremont – 200 Tons/Day
- b. Wheelabrator in Concord – 575 Tons/Day

Municipal Combustors

- a. Bridgewater/Hebron – 360 Tons/Year
- b. Candia – 790 Tons/Year
- c. Litchfield – 360 Tons/Year
- d. Ossipee – 1357 Tons/Year
- e. Wilton – 3470 Tons/Year

Given the prohibition in SB 524 for C&D incineration in areas not zoned for such an activity or within three miles of the above-listed entities, it appears that none of the existing facilities would be allowed to burn C&D. It should be noted that the two waste-to-energy facilities do not burn C&D by choice, even though they are permitted for the activity. The remaining municipal combustors burn MSW and some small amounts of C&D that may get mixed in with normal trash. Prohibiting the incineration of C&D would not impact electricity generation from the large waste-to-energy facilities, but may increase the cost of disposal in communities that use the municipal combustors to burn small amounts C&D debris.

Also, determination of the zoning uses that are applicable to a property, whether or not a facility is ultimately sited at the location, is best handled through the local zoning process including variances

and appeals, not through RSA 149-M. RSA 149-M (Solid Waste Management Act) is not a zoning law. Legislation currently in place (RSA 149-M:9, VII) already recognizes that permits granted by the Department of Environmental Services (Department) shall not affect the permittee's obligation to obtain local permits where required.

The proposed bill as written would place the burden of interpreting the legalities of local zoning onto the Department. The Department does not have the authority or the resources to make that kind of determination. Further, the solution is not as simple as the municipality simply stating that zoning prohibits the use, as was recently demonstrated by court action between the owner of one of the State's largest lined landfills and the community in which it is located. In that case, the town maintained that the landfill permittee did not hold proper zoning approvals for expansion. The permittee claimed they did have all necessary approvals, and each side had evidence to support the claim. The case is now in the New Hampshire Supreme Court for final resolution.

It is also important to note that this proposed bill runs contrary to the waste management hierarchy codified in RSA 149-M:3. Since almost all locations in New Hampshire are within three miles of the uses stated in the proposed legislation, the bill could force construction and demolition debris to be landfilled. Landfills are considered the least desirable waste management option in the hierarchy. The prohibition by law of combustion for C&D wastes would increase the need for landfills and eliminate C&D as a form of fuel in another state.

As a sidebar note, the emission controls placed on solid waste combustion facilities through current regulatory permits, coupled with quality assurance procedures and reporting requirements pertaining to the material to be burned, serve to ensure that emissions will meet prescribed standards. The ash residuals associated with burning the waste materials are also managed at properly designed permitted landfills (in-state and out-of-state) that contain the ash in a secure setting.

While the Department understands the intent of the bill, it must oppose the legislation for the reasons stated above. In summary, the Department is not equipped to resolve disputes regarding local zoning issues; is required by statute to encourage the management of waste in accordance with the disposal hierarchy; requires the proper management of all waste materials; and make its decisions, with input from the local populace, based on good science and best available technology.

If you have any questions regarding this letter of testimony, please do not hesitate to call me or Anthony P. Giunta, P.G. at 271-2905.

Sincerely,

Michael P. Nolin
Commissioner

cc: Senator Sylvia B. Larson
Senator Robert B. Flanders
Senator John T. Gallus
Senator Joseph D. Kenney
Representative Christine C. Hamm
Representative Richard E. Kennedy
Representative David P. Currier
Representative Derek Owen
Representative James Phinizy